IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14070 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABULAL RAMANLAL VAIDYA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR VN BHAGODIA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 28/12/2005

ORAL JUDGMENT

1. This is the third round of litigation in which, invoking Articles 226 and 227 of the Constitution, the petitioner has prayed for terminal benefits such as

gratuity, difference of pay for the suspension period, leave pay, family pension as per the rules, converted pension and dearness allowance.

2. There is no dispute about the fact that the petitioner had, after his dismissal from service, approached the Civil Services Tribunal and the order of the Service Tribunal was challenged in this Court by the State in Special Civil Application No. 4255 of 2002. While disposing that petition, by the order dated 24.12.2003, it was directed as under:-

> *"4. Today, Mr. Sood, learned AGP, has stated that the Department has agreed to substitute the penalty, by imposing the penalty of compulsory retirement from the date of the aforesaid order of removal. Mr. Sood has placed on record a copy of the order dated 22.12.2003, passed by the Deputy Secretary, Forest Department, which is addressed to the Principal Conservator of Forests, Gandhinagar, in which the Deputy Secretary has stated that the Department has agreed to substitute the said penalty. Considering the aforesaid aspect of the matter and when the petitioner has agreed to substitute the penalty from removal to compulsory retirement, this petition is partly allowed. The order of the Tribunal, which is impugned in this petition, is quashed and set aside. The order of the disciplinary authority is also set aside in so far as it imposes penalty of removal. Instead, the order of penalty is substituted by the order of compulsory retirement. The effect of the order is that the respondent shall stand compulsorily retired from service with effect from 28th January, 1999. In short, the order of penalty is substituted by compulsory retirement. The order in question will be effective from the date on which the earlier order of removal was passed. By virtue of this order if the respondent is entitled to any retiral dues as per Rules, whatever such dues which are payable by virtue of the substitution of the penalty order, shall be paid to the respondent latest by 15th February, 2004. The Government is directed to expedite payment of such retiral dues to the respondent so that the question of payment*

of interest does not arise. The learned advocate Mr. V.N. Bhagodia, who is appearing for the respondent, states that the respondent shall withdraw all the complaints filed by him against the officers of the Department. He further states that the complaints are in the nature of private complaints and some of the complaints were already withdrawn. Mr. Bhagodia, on taking oral instructions from his client, who is present in the Court, states that the respondent shall withdraw all the complaints."

3. Thereafter, the petitioner appears to have approached this Court by Misc. Civil Application No. 583 of 2004 in which, by order dated 12.7.2004, it was noted that the petitioner had agreed to accept the compulsory retirement and considering that aspect, the petitioner was permitted to make a representation and the Principal secretary, Forest Department was required to take appropriate decision on the question regarding giving full compassionate pension to the petitioner. Thus, the authorities were required to pass appropriate order in connection with releasing compassionate pension. In the order dated 9.8.2004, it was noted that the Finance Department of the Government had agreed to sanction full compassionate pension payable to the petitioner. The petitioner, at that time, requested that the interest on delayed payment should also be ordered and the Court observed in that regard that whatever amount was required to be paid to the petitioner in view of the decision of the State Government should be paid latest by 10th September, 2004. Being satisfied with that observation(s), the petitioner had withdrawn that application.

4. After the aforesaid proceedings, the present petition for additional benefit is filed. Opposing the

averments and prayers, it is stated by filing affidavit-in-reply of Deputy Conservator of Forest, (ADM) that the petitioner has been granted full compassionate pension and family pension by order dated 26.10.2004. It is stated that such compassionate pension is granted on the ground of mercy and in view of the orders of this Court. It is also stated that the petitioner has been punished under the Gujarat State (Discipline and Appeal) Rules, 1971 with a major penalty of compulsory retirement and the benefits which could be granted by exercising discretion of the Government have already been granted. As for the wages for the period of suspension, that period is stated to have not been treated on duty and the petitioner did not have any earned leave in balance of which encashment could be made. The petitioner is also found not entitled to any amount by way of commuted pension. Thus, in short, none of the claims made by the petitioner are admitted.

5. Learned counsel Mr. Bhagodia, appearing for the petitioner, vehemently argued that the petitioner was innocent and in fact an order in his favour was passed by the Civil Services Tribunal and he should be paid all the retiral dues. After the judicial orders referred hereinabove and in absence of any legal basis for the claim made by the petitioner, the terminal benefits such as gratuity, leave encashment or difference of salary for the suspension period cannot be ordered to be paid. It is clear from the record that the respondents have already exercised their discretion in favour of the petitioner in sanctioning compassionate pension and no other claim is supported by

any legal provision. Therefore, the petition is dismissed as misconceived and Rule is discharged with no order as to costs.

6. After the above order was dictated, the learned counsel sought permission to withdraw the petition with a view to making a representation to the Government. That request is also rejected.

Sd/-

(D.H. WAGHELA, J.)

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